

Report of
Commission to Study and Re-Evaluate
Patuxent Institution



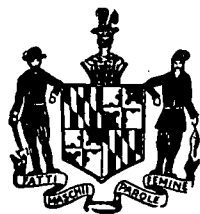
To

Senator George W. Della, Chairman

Legislative Council of the
General Assembly of Maryland

January 25, 1961

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LETTER OF TRANSMITTAL

January 25, 1961

Honorable George W. Della, Chairman
Legislative Council of Maryland
Annapolis, Maryland

Dear Senator Della:

The report of the Commission to Study and Re-Evaluate the Patuxent Institution is enclosed herewith. We have prepared a draft of a bill to give effect to our recommendations.

The members of the Commission wish to acknowledge the valuable assistance we have received from our secretaries, Stephen D. Moses, Esq., and Lowell R. Bowen, Esq., of the Baltimore Bar, and from Dr. Carl N. Everstine, of the Department of Legislative Reference.

Respectfully,

Franklin D. Allen

Martin D. Jenkins

John A. Luetkemeyer

Reuben Oppenheimer

Robert H. Roy

Roszel C. Thomsen, *Chairman*

Commission to Study and Re-
Evaluate the Patuxent Institution

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**REPORT OF COMMISSION TO STUDY AND RE-EVALUATE
PATUXENT INSTITUTION**

TO

**SENATOR GEORGE W. DELLA
CHAIRMAN OF THE LEGISLATIVE COUNCIL
OF THE GENERAL ASSEMBLY OF MARYLAND**

JANUARY 25, 1961

This Commission was appointed in July of 1960: (1) to study the objectives of the statute governing defective delinquents, Code, Article 31B, Sections 1 to 16, and the organization, policies and administration of the Patuxent Institution; (2) to consider whether Patuxent is realizing those objectives or is likely to realize them in the future; (3) to report our findings to the Legislative Council; and (4) to recommend any changes which we believe should be made in the statute or in the organization, policies and administration of Patuxent.

NATURE OF INVESTIGATION

The Commission has had twelve meetings, of which five were public; there have also been numerous meetings of subcommittees. The following members of the Patuxent Institution staff appeared and testified before the Commission: Dr. Harold M. Boslow, Director of the Institution, Col. William J. E. Keish, the Assistant Director in charge of the Custodial Force, and Mr. Arthur Kandel, a staff psychologist.

Several members of the Advisory Board of the Institution testified, including Dr. Manfred Guttmacher, the Chairman, Dr. Jerome D. Frank, Prof. G. Kenneth Reiblich, and Mr. Jerome Robinson. Dr. William Straus, Jr., a former member of the Board was also heard. The views of the Board of Correction were presented by Mr. G. C. A. Anderson, Chairman, and his predecessor, Mr. Enos S. Stockbridge. The witnesses from the Department of Correction were Mr. James W. Curran, Superintendent of Prisons, his predecessor, Mr. Harold E. Donnell, and Mr. Vernon L. Pepersack, Warden of the Maryland Penitentiary. The Commission also had the benefit of testimony from Mr. James E. Bennett, Director of the Federal Bureau of Prisons.

Four members of the Maryland Judiciary testified to their experience with the Defective Delinquent Law: Judge J. DeWeese Carter, Judge James Macgill, Judge James K. Cullen, and Judge Dulany Foster. Mr. Frederick Invernizzi, of the Administrative Office of the Courts, testified regarding the statistical information available through his office. Two attorneys who have represented Patuxent inmates, Mr. Alan H. Murrell, and Miss Elsbeth Levy, presented their views. Mr. Abraham Adler, Assistant State's Attorney for Baltimore City, who has tried a number of the defective delinquent cases in the trial courts, and Mr. Joseph Kaufman, of the Attorney General's Office, who argues these cases on appeal, testified with regard to the operation of the law from the point of view of the State.

indeterminate sentence. The project envisages that defective delinquency can be ascertained by Patuxent's professional staff of psychiatrists and psychologists, although there can be no commitment under the law unless and until the person is found to be a defective delinquent by a court or jury in a proceeding which carefully protects the individual's rights. If as a result of these findings the criminal is adjudicated a defective delinquent, the basic concept of the project is that only by his commitment under an indeterminate sentence can the lives and safety of the public be adequately protected.

The second underlying concept of the project is that with the developments in the medical and sociological professions which have been and are being made, treatment in Patuxent will make some defective delinquents reasonably safe for return to society, when otherwise, without such specialized professional care, they would continue to menace the safety of our citizens.

As the law and the studies which preceded it made clear, persons committed as defective delinquents are defective either mentally or emotionally, although in some cases, the deficiencies overlap. Research Report No. 29 of the Research Division of the Legislative Council of Maryland, published in 1950, before the passage of the act, states:

"In one sense, the purpose of the proposed law is to expand, as a practical matter but not by actual definition, the concept of the area of insanity. * * *

" * * * This is in no way shocking when we keep in mind that a lunatic may be incarcerated for life even though he has committed no crime whatever while, as shall be explained later, a defective delinquent under the proposed legislation must be first convicted of a substantial criminal act. Like the lunatic the incurable criminal defective would be confined for life, not because of guilt, but to protect the defective himself and society. * * *

"The term 'defective' is to be understood as applying to the two chief spheres of human behavior: the intellectual and the emotional. It is well known to members of the psychological professions and to laymen that inadequacy in either one or both of these spheres can be shown. * * * In any given offender, one may exist without the other, or both may appear simultaneously within a single personality. It is possible, as for example in the case of a criminal psychopath to have a high intelligence quotient together with an emotional inadequacy. * * * Similarly, emotional adequacy may be present where the intelligence is low or limited. In many cases, it will be found that a limitation in both spheres exists conjointly. In other words, a *criminal* defective may be either a mental defective, or an emotional defective, or both. A mental defective is a person far below the average in intelligence, a low grade moron, although not insane from a legal standpoint. An emotional defective is a person who may have low or high intelligence, but whose emotional facilities are distorted and unbalanced, an egocentric incapable of considering the rights of others. * * *

It was recognized that the successful treatment of the emotional defectives (sometimes called psychopaths and sociopaths) presented even greater difficulties than that of the mental defectives, but with the advances in psychiatry and psychology it was believed that some psychopaths could be made law-abiding and safely returned to society.

"Our Committee fully subscribes to the rationale of the Defective Delinquent Law and its operation in the Patuxent Institution."

And again:

"The State of Maryland is to be commended for a pioneer innovation of law of which Patuxent is its operational extension. In this, the law calls upon science to fulfill its aim for more humane justice and for a larger security for the public."

Patuxent, and the concepts it embodies, have been internationally recognized. Other states are studying the Maryland law in their attempt to meet the increasing menace of crime.

In the Commission's opinion, however, the concepts which underlie this project should be re-examined in the light of Maryland's experience in the attempt to carry them out. The law has been in effect and Patuxent in at least partial operation for over five years. We take it to be our function to re-examine the considerations which led to the passage of the indeterminate sentence law for defective delinquents and the establishment of Patuxent in the light of what has been accomplished, the difficulties encountered, the reasons therefore, and the reasonable prospects for the future if the project is to be continued.

THE PROTECTION OF SOCIETY

If, as seems clear to us, the core of the project is the protection of the lives and persons of innocent people against the depredations of certain peculiarly dangerous criminals, experience under the law, comparatively brief as it has been, enables us to re-evaluate the validity of that objective and the extent to which it is being realized.

The project rests upon two assumptions: first, that Patuxent, through its diagnostic clinic, is able to determine which of the criminals sent to it for examination fall within the categories of defective delinquents defined by law; and, second, that the court procedure which follows such a diagnosis operates fairly and adequately.

The law provides that a person can be examined for possible defective delinquency only "if he has been convicted and sentenced in a court of this State for a crime or offense coming under one or more of the following categories: (1) A felony; (2) a misdemeanor punishable by imprisonment in the penitentiary; (3) a crime of violence; (4) a sex crime involving: (A) Physical force or violence, (B) disparity of age between an adult and a minor, or (C) a sexual act of an uncontrolled and/or repetitive nature; (5) two or more convictions for any offenses or crimes punishable by imprisonment, in a criminal court of this State." Sections 14 and 15 provide that the law shall not be construed to extend to any person involved in any case in a juvenile court, a court of a magistrate for juvenile causes, or any case in the court of a magistrate or justice of the peace. Section 16 states that the law shall be construed to include only crimes committed after June 1, 1954. The examinations for possible defective delinquency are to be made by at least three persons on behalf of Patuxent, one of whom shall be a medical physician, one a psychiatrist and one a psychologist. The Court of Appeals has noted, in *Palmer vs. State*, 215 Md. 142, that "the statute is very exacting about the professional qualifications and experience required of the top personnel at Patuxent."

again in criminal court, charged with the commission of other crimes after their release.

A tragic example of the accuracy of a Patuxent diagnosis was given by Judge J. DeWeese Carter.

"We had a case in our county about a year or so ago. The defendant's name was Breeding. He was in several larceny crimes; then he was sent to Patuxent. Patuxent said he was a defective delinquent. He had a jury trial in our county.

"The jury inquired of me, saying: 'Now, this man has an eighteen-month sentence. How long a sentence is he going to have if we declare him to be a defective delinquent?' They formally got up in the box and asked the question.

"I said: 'Well, he will be there until the staff says he is no longer a defective delinquent. That is an indeterminate period of time; but he is entitled to have that matter reviewed periodically every three years.'

"A man said: 'Do you mean to say he might be there for the balance of his life?'

"I said: 'That is possible; it is according to whether his emotional structure is adjusted so he is fit to go back to society.'

"The jury went out and were not out very long; they came back with the finding that he was not a defective delinquent.

"Dr. Boslow had testified in the case and said: 'This man is dangerous; he is definitely criminally inclined. In my opinion, if he is let loose, he will commit serious crime in six months.'

"They turned him out on that finding; the House of Correction soon discharged him. He came back to Caroline County; he was not there two months before he got intoxicated. He went in search of a woman; he did not care much what kind. He made several stops and finally, in desperation, stopped at the home of this young bride (who was pregnant about two months), took her in a car, took her out in the woods and strangled her.

"So we tried him, convicted him of first degree murder, with three judges in the circuit sitting."

Harold E. Millsap, after considerable juvenile difficulties, was on a suspended sentence for a post office robbery in 1956, when he was convicted in 1957 of housebreaking in Baltimore County. The Judge sent him to Patuxent for diagnosis. Patuxent, after examination, recommended that he be committed as a defective delinquent, but he was found not to be a defective delinquent by a Baltimore County jury in January, 1958. He was returned to the Maryland House of Correction to serve the remainder of his sentence and was released on August 23, 1960. On December 7, 1960, he was killed while committing an armed robbery.

We recognize that Patuxent's diagnoses cannot have the certainty of mathematical conclusions, that the findings of defective delinquency rest on the judgment of experts rather than on the marshalling of demonstrable facts. Law is not, and cannot be an exact science. The determination of defective delinquency is but another instance in which the risks of human fallibility are to be weighed against the protection of the public order and

appointed by the Board of Correction, and by a committee appointed by the Legislative Council. Moreover, the Legislature appropriated funds for the construction of a new institution to deal with the problem. The new Act calls for a staff composed of professional psychiatrists, psychologists and sociologists. In character the Act is not unlike statutes providing for a civil inquiry into the sanity of a person. This character is not altered by the fact that it deals only with persons who have demonstrated criminal tendencies resulting in criminal convictions, nor by the fact that it utilizes some of the traditional methods of adjudication and review that have been developed in the criminal law."

In *Cowman vs. State*, 220 Md. 207, the Court's opinion concludes as follows:

"Counsel for the appellant also contends that the expert testimony as to 'emotional unbalance,' involves a legal conclusion, based merely upon antecedent behavior. Here again, we recognize that it is difficult to draw the line between a so-called 'normal' criminal and a 'psychopathic' or 'emotionally unbalanced' criminal. But as we have said, the matter is one susceptible of proof, and courts must rely largely upon the opinions of the experts, particularly where there is no substantial disagreement in the basic diagnoses. Antecedent behavior is only one of the tests. It is claimed that examination and observation by competent and experienced psychiatrists and psychologists, together with established tests of an objective nature, can separate these offenders from the rest of the criminal group. We are not prepared to hold that the claim is unfounded, or that such tests play an inconclusive role. Nor are we prepared to deny the validity of the claim, merely on the strength of the assertion that such a large proportion of all criminals could be shown to be 'emotionally unbalanced' that Patuxent could not possibly deal with them all. The present Act is admittedly a new approach to an old and puzzling problem. We should not impose legal impediments to proper legislative experiments that meet constitutional requirements."

The constitutionality of a statute is not necessarily determinative of its workability in practice. It is the trial judges who hear cases under the law, with or without a jury, who are best able to determine whether the test of defective delinquency set forth in the statute is practical and fair. The four trial judges who appeared before us have together heard over 200 defective delinquency cases, constituting the majority of all the cases tried in the State. Judge Macgill was of the tentative opinion that either Patuxent's psychiatric personnel should be increased or the definition of defective delinquency should be narrowed. However, all four of the judges agreed that, in their experience, the present definition of defective delinquency had presented no untoward difficulties of adjudication.

Dr. Boslow, Patuxent's director, testified that he and his staff had spent a great deal of time in discussing the present definition of defective delinquency, and had been unable to come up with any improvement. This opinion was shared by other eminent psychiatrists who testified. The definition was favorably commented upon by Professor Hermann Mannheim, one of the leading European criminologists, in his address to the Fourth International Criminological Congress in Holland last summer.

The judicial and psychiatric agreement on the definition of defective delinquency is in striking contrast to the controversy between the medical

rangement. We found otherwise. The holding was that there was sufficient evidence to support the finding of defective delinquency, even though the appellant in that case had demonstrated no criminal propensities for crimes against the person, but only a series of larcenies and housebreaking.

"In the instant case we think the evidence supports the verdict, and we cannot find that the trial judge was clearly wrong in ordering the commitment. * * * It may well be that there are some crimes, or series of crimes, so trivial as to pose no actual danger to society. * * *"

We should not hesitate to recommend that the law be amended so that Section 5 would apply only to persons found to have such intellectual deficiency or emotional unbalance, or both, as to clearly demonstrate an actual danger to lives or persons, excluding danger to property, if we believed that such an amendment is advisable in the light of the operation of the law. There are, however, in our judgment, good reasons why such an amendment should not be made at this time. Some crimes may involve only property and yet may be serious threats against the public safety, such as arson and burglary. Patuxent may find that a person who, so far, has only committed crimes against property is an actual danger to lives or personal safety, but if the law were amended, a jury, understandably, might be loath to commit such a person whose previous offenses were only against property. Confinement and treatment at Patuxent may result in making a person dangerous to property safe for return to the community, when, without such treatment, he would continue his depredations on release from a determinate sentence.

The law should be amended, in our opinion, only when compelling reason for such an amendment has been shown. Amendment is not the only way of effectuating a change of policy. Under the law, there is discretion as to when a person is to be sent to Patuxent for examination to determine if he is a defective delinquent. This discretion was broadened by the General Assembly in 1960 as a result of the 1959 Report of the Legislative Council Committee on Patuxent, so that the Court may grant or deny a request for an order for the examination. The Committee found, and the legislature by passing the amendment clearly agreed, that it was advisable to give the court this discretion so that some preliminary screening may be provided of these persons for whom a request for examination is made. Such a preliminary screening may well exclude a person when a preliminary medical report made to the court indicates he is apt to be a danger to society only as to relatively minor offenses against property, such as petty larceny, embezzlement and disorderly conduct. Patuxent itself, in its report on persons sent to it for examination, even though it may find that the person is a defective delinquent, may well add a statement to the effect that the danger he presents is apt only to be in the class of cases to which reference has been made; and, if circumstances warrant, might state that his commitment to Patuxent would be inadvisable.

If Patuxent finds that persons already committed to it fall within the category of those whose tendencies are confined to relatively minor offenses against property, it has broad discretion under the law to release them on parole or otherwise. In its development, Patuxent may determine that the increase in its own population makes it advisable to concentrate its treatment on those criminals who constitute the greatest menace to the public safety. Even though some less dangerous criminals who are released by Patuxent may continue their offenses against property, the in-

In *Blizzard vs. State*, 218 Md. 384, Chief Judge Brune, in delivering the opinion of the Court, said:

"Commitment proceedings under Article 31B (quite properly, we think) throw extensive protections around the person involved therein; and in many respects they are such protections as are afforded to the accused in a criminal case. However, such proceedings do not charge the person involved with any crime. They are not prosecuted on indictment or information, but are based upon a report of a clinical examination. Conviction and sentence for crime are historical facts which are prerequisites to the examination leading up to the commitment proceedings, but here is no issue as to guilt or innocence of any crime or crimes of which the person involved has already been convicted. * * * The sole issue is whether the person before the court is or is not a defective delinquent."

The protections afforded to the defendant include the appointment of a psychiatrist of his own choice at the expense of the State, trial before a jury if he so elects, representation by counsel of his own choice, or, if he makes no choice, by competent counsel appointed by the court at the expense of the State, full access by the defendant and his counsel to all records, reports and papers of Patuxent relative to the defendant and to all papers in the Court's possession bearing upon the case, and full opportunity to summon witnesses to and present evidence at the hearing. After any person committed as a defective delinquent has been confined for two years, he or anyone in his behalf may file a petition for the purpose of having the question of his defective delinquency redetermined in a court proceeding, and, if it is again determined that he is a defective delinquent, he can file other petitions for redetermination at three year intervals. His right to petition for *habeas corpus* is not affected by the provisions for redetermination. There is the right to appeal from any court order on leave given by the Court of Appeals. If the defendant is unable to pay, the cost of the transcript of testimony, other court costs and counsel fee are paid by the State.

As Judge McLaughlin held in the case of *Caple vs. Patuxent*, it is implicit in the law that a defendant is entitled to have the issue of defective delinquency tried within a reasonable time after Patuxent has had an adequate period to make its finding. There are two periods involved, the interval during which the defendant is held at Patuxent for examination, and the time between Patuxent's report and the court determination thereon. From the point of view of the defendant, insofar as the final determination of his status is concerned, the two periods are one, but after Patuxent has made its finding the responsibility for prompt action shifts from the institution to the court, the state's attorney and the defendant's attorney.

When Patuxent first began its operation, because of an insufficient staff and because of other administrative difficulties, there were often undue delays from the point of view of the defendant before Patuxent made its finding, but at the present time it is generally agreed that Patuxent reports its diagnosis to the referring court within a few months and as promptly as the thorough nature of the examination permits. In Baltimore City, one judge has been assigned to hear defective delinquency cases, and the docket in the City in this respect is now substantially current. As the *Caple* opinion indicates, however, and as we have been informed during the hearings, in some jurisdictions of the State there are

ment. They fear that if his status were held in abeyance until the expiration of the term of his original sentence, the tendency might be for the inmate to evidence external conformance for its possible effect in the court proceedings, rather than to strive for the internal control, which, under the indeterminate sentence, is the only key to parole or release. Further experience in Patuxent's treatment techniques may bring a re-evaluation of the proposal, but, at least for the present, we believe its effects on the individuals involved to be too conjectural to warrant its adoption.

The second suggestion of Miss Levy is that, even though the present procedure on the issue of defective delinquency be retained, the right to petition for redetermination be postponed until the expiration of the term of the fixed sentence. As in the first suggestion, in ascertaining the time at which the petition could be filed, the maximum allowances for good conduct and work would be given effect. The inmate would be subject to the parole provisions applicable to defective delinquents rather than the parole provisions applicable to prisoners generally.

Under this proposal, a number of court hearings on petitions for redetermination would be obviated with no resultant unfairness to the individual. If a person has been committed as a defective delinquent, and if on a petition for redetermination, which, under the present law can be filed two years after the committal, he is found no longer to be in that category, he is not released but is returned to the jurisdiction of the Board of Correction to serve the remainder of his fixed sentence. The knowledge of the right to have a redetermination at such a comparatively short interval after the original commitment may militate against the efficacy of Patuxent's treatment. The multiplicity of court hearings takes up a substantial amount of the time of the director and his staff. We recommend the adoption of this suggestion.

The Committee of the American Psychiatric Association made the following recommendation:

"That after commitment of the defective delinquent, a provisional term be established for comprehensive observation and treatment to determine the treatability of the defective delinquent and that upon proper certification by the Patuxent staff to the Court, the defective delinquent found unable to respond to the treatment currently available, be removed to another institution in the State system; and that following his removal and upon further mandatory review by qualified examiners, he have a right of petition for return to Patuxent, having demonstrated to the examiners' satisfaction that he has attained sufficient motivation for further treatment. We regard this last provision as reasonable since it covers the contingency of spontaneous change, safeguards the subject from neglect and maintains the offer of hope as against the despair of abandonment."

We are in general agreement with this recommendation, but we do not believe that it is necessary or advisable to put it in operation at this time. As will appear later, under the heading "Future of Patuxent", we suggest that this recommendation be given continued study by the authorities responsible for the operation of the Institution.

It is too soon to make a practical determination as to how many of the persons committed to Patuxent will eventually be found to be untreatable. After thorough evaluation and such treatment as may be suitable, some, no doubt, will be determined to be beyond the help of medical science,

port of the Committee of the American Psychiatric Association, whose discussion and recommendations are attached hereto, is an informed professional judgment on the present status of treatment techniques.

Our comments on the treatment which Patuxent is administering are confined to our understanding as laymen of what Patuxent is endeavoring to accomplish. The essential concept of Patuxent is that while the inmates must of necessity be subject to punitive constraints, this is not the objective. Instead, the effort is made to develop internal controls within the individual himself in order that he may learn sufficient self-control to become a useful member of society when released. The motivation for such development is provided primarily by the indeterminate sentence and by incentive rewards within the institution itself. To be released on parole the inmate must do more than behave and serve time, he must strive to acquire sufficient mental health through treatment to avoid criminal behavior in the future.

Ideally, this is the objective of any correctional institution. In Maryland, however, as seems to be true in many if not most of the state correctional systems throughout the country, practical conditions result in a different approach. Most correctional institutions, including those in Maryland, are badly overcrowded, and lack the professional staff of psychologists and psychiatrists which, it is recognized, are essential to effectuate the desired programs. Some of Maryland's correctional institutions, other than Patuxent, are housing up to as many as one-third more inmates than they were designed to hold. There is no full-time psychiatrist for the approximately 5,400 inmates in the Penitentiary, the House of Correction, the Reformatory for Males and the Reformatory for Women. At the Penitentiary, five part-time psychiatrists are employed each for part of one day a week.

The annual reports of the Department of Correction show that of the inmates committed to the State's four corrective institutions, during the fiscal year ending June 30, 1950, over 73% had known prior records of offenses. Of the persons committed in 1956, nearly 85% had records of previous convictions in adult or juvenile courts. In 1957 the percentage was approximately the same. Statistics concerning recidivism have significant limitations and sometimes may be misleading, but in Maryland, as is generally true throughout the country, the prospects of rehabilitation for the average prison inmate are far from hopeful. In Mr. Bates' words: "There are abnormalities about prison existence which tend, unfortunately, to confirm the worst in men rather than bring out the best . . . The rate of recidivism among the inmates of our prisons, which hovers around 70%, seems to many people to indicate that imprisonment received merely as punishment, is not preventing recidivism."

Because of the fiscal and physical limitations within which Maryland prisons have been operating, no criticism of the State's correctional personnel is involved in the statement of our conviction that in practice the impact of the correctional system, apart from Patuxent, is chiefly external constraint, largely punitive in character. The effect of the system upon the inmate is chiefly to cause him to conform to the rules in order to make his stay less unpleasant and to minimize its duration. While the Maryland prison system is notable for its development of State Use Industries, that feature of our prisons, important as it is, does not materially affect our conclusion. As the figures on recidivism indicate, most inmates when discharged feel they have paid their debts to society, and, in their own dis-

It is too early to compare Patuxent's successes in its parole program with any state or national average, but at least a substantial beginning has been made in release programming, with the resultant hope of successful treatment for those still under full time commitment.

The Commission cannot predict the percentage of those persons committed to Patuxent as defective delinquents for whom, given the resources which it may be determined from time to time Patuxent needs, there is substantial hope of successful treatment. Dr. Boslow testified that when he first took the position as Patuxent's Director, he felt pessimistic about the prognosis of successful treatment, believing that the prospects of cure were only two or three per cent, but that as a result of experience the staff has found that very few people can be considered untreatable. At the present time, he said, he could think of only four or five people in the Institution whom he would consider untreatable at this point. Some of the other psychiatrists who have given us the benefit of their views are inclined to believe that the Institution's estimate of the percentage of its inmates who can be successfully treated is too optimistic, but they agree that this optimism in itself is desirable and may lead to more successful results than would otherwise be achieved. It is inherent in the whole concept of Patuxent that its operation will continue to evolve new concepts of treatment for the dangerous classes of criminals committed to it.

It is of the greatest importance for the persons committed to Patuxent that as individuals they realize that through treatment, if they cooperate, parole or release may become possible. Mr. Bates, in his Report on Patuxent to the Self-Survey Commission, pointed out that inmates of Patuxent have complained that although the limits have been taken off their sentences and they are now facing a lifetime of confinement for treatment, they nevertheless have received no treatment, and that they considered it a poor bargain to have given up their legal rights to be discharged at the expiration of a fixed court-imposed sentence in exchange for treatment which they have not had. Evidently the complainants did not realize that group therapy is an approved form of treatment.

The law is not a bargain between society and the criminals it affects. The indeterminate sentence for defective delinquents has been enacted, and we believe wisely enacted, to protect the public against particularly dangerous classes of criminals. The treatment of the persons committed was provided to endeavor to make them fit to return to the community, for the benefit of the public which otherwise would have to support them in some institution, as well as for the sake of the individuals involved. The number of cures effected at Patuxent is not the sole or even the most important criterion for the appraisal of the project, now or in the future. Nevertheless, treatment of the defective delinquents to the extent that professional skills and physical facilities can be made available, within the reasonable limits of the State's resources, is one of the basic objectives. Lack of such facilities, or belief that such facilities were lacking, has caused serious difficulties in the administration of Patuxent in the past and was probably a cause of the escape of a number of inmates in April of 1959. Conversely, the knowledge that treatment is available is, of itself, a vital part of the development of the internal control which is Patuxent's central concept.

We have been assured by the Committee of the American Psychiatric Association and by the witnesses who appeared before us who were best

the research facilities should be made available to qualified persons in allied academic fields. We are advised that the Johns Hopkins Medical School is using Patuxent's facilities for some of its students, and that similar arrangements are under discussion with the University of Maryland Medical School. Dr. Jerome D. Frank, Professor of Psychiatry at the Johns Hopkins University School of Medicine, points out that the research program affords a valuable link with the medical schools, and that contact with the schools is valuable for Patuxent both to help the staff's morale and as a means of recruitment of staff members. From the standpoint of the schools, Patuxent affords valuable research and teaching opportunities.

While promising beginnings seem to have been made, in our opinion, it is too early to evaluate the contribution Patuxent can make in this vital field. The increased knowledge of the difficult and socially costly types of criminals with whom Patuxent is concerned can add greatly to the ability to rehabilitate these persons, with a corresponding gain to the community. However, the possibilities of research, like those of treatment can only be fully realized with an adequate staff and other facilities. The progress of both programs should be surveyed and re-evaluated at periodic intervals to ascertain what progress has been made and whether the devotion of community resources to these fields of the project are being justified. Without the allocation of adequate resources, research, like treatment, cannot be expected to realize its great potentials.

THE FUTURE OF PATUXENT

The average annual referral rate to Patuxent for examination of persons convicted of crime has been 110. Of Maryland's 24 jurisdictions, 23 have made referrals. Baltimore City has referred 53% of the persons; Baltimore City, Baltimore, Prince George's, Montgomery, and Anne Arundel counties together have referred 81% of the total. It is clear that Patuxent is serving the entire State.

At the present rate of commitments and paroles, it is estimated that Patuxent, even with its new building, will be full before 1970. The total capacity of the Institution when the maximum security unit is completed, will be 600, of whom approximately 200 will be at some diagnostic stage prior to commitment. Maryland's present penal population, including those persons in Patuxent, is approximately 5,400.

No study has been made as to the proportion of the criminals in the State's penal institutions who are defective delinquents. If such a diagnosis were feasible, many of the persons found to be defective delinquents could not be committed to Patuxent under the law because they had not been convicted of one of the designated crimes after June 1, 1954. It has been estimated, however, by Dr. Guttmacher and Dr. Boslow, that approximately 15% of all criminals come within the category of defective delinquents as defined in the law.

There is general agreement that an institution such as Patuxent should not be large. Only in an institution where there can be intensive study of each inmate can adequate treatment be evolved and administered. Nevertheless, despite the hoped for advances in the techniques of treatment and even with a greater percentage of releases, it seems probable that Patuxent's inmate population will steadily increase in proportion to the penal population as a whole. Some of the inmates are so dangerous

but at least there would be a definite answer to the experiment. Failure because of insufficient support would be tragic and would provide no answer at all.

We recommend that Patuxent be continued and that it be given sufficient support to realize fully the concept upon which it was established. We further recommend that an interim evaluation of Patuxent's progress be made in five years, and a more thorough evaluation in ten.

ADMINISTRATIVE ORGANIZATION

The general agreement that the objectives of the law are sound and that Patuxent should be continued is paralleled by the almost unanimous opinion that the present administrative organization of the project is unworkable.

The studies which preceded the enactment of the law show the awareness of the various groups of the peculiar organizational difficulties involved. On the one hand, it was believed the project could only be successful if diagnosis and treatment of the defective delinquents were under the exclusive control of the psychiatrists and other professionals to whom Patuxent's program was to be entrusted. On the other, it was recognized that the problem of defective delinquency was essentially a problem of correction; that Patuxent was to be, in part at least, a prison; and that the ultimate aims of the project were the protection of society and the development of penology, which are functions of the Board of Correction. The provisions for administrative control in the statute as finally enacted were a compromise. Patuxent was given independence in some matters, such as diagnosis, but the Board of Correction was given general administrative control and supervision. The chain of command between Patuxent and the Governor was left unclear, presumably in the hope that cooperation between the Board and the Director might, in practice, fill in the statutory lacunae. The conflicts, ambiguities and inevitable sources of administrative difficulties in the present law are delineated in two documents, the first an opinion of the Attorney General of Maryland to the State's Attorney for Howard County, dated June 17, 1959, answering questions as to the construction of the law, the second, the survey of Patuxent made by Mr. Sanford Bates at the request of the Maryland Self-Survey Commission, published October 30, 1959. The Attorney General's opinion and excerpts from Mr. Bates' report are attached hereto as Appendix III.

In our opinion, there has been sufficient experience to justify an evaluation of the administrative structure which the law embodies. We agree with the great weight of the testimony of the qualified persons who discussed this question in the hearings that the organizational setup of Patuxent is unsound and impractical. We are further of the opinion that a fundamental change in the administrative structure is essential for the success of the project.

The Legislative Council Committee on Patuxent Institution, in its report of December, 1959, stated:

"The Committee recognizes that there are three possible solutions to the problems of administrative organization now faced by Patuxent Institution. These are respectively:

"(a) *To make Patuxent completely autonomous of any State Department.* We reject the principle of autonomy at this time because

in our judgment, are fundamentally different points of view, each held in good faith, but which have resulted in administrative frustration and interference with proper governmental responsibility. We believe that these conflicts are inherent in the law, that they have seriously handicapped Patuxent's development, and that, unless they are eliminated, they will make the Institution's successful operation impossible.

In our deliberations, we have endeavored to explore every possible avenue of making the present administrative setup more feasible of operation by informal agreements as to working arrangements or by statutory clarification. Our efforts have been unavailing. We are reluctantly convinced that it is imperative for the success of the project and desirable from the point of view of the administration of the State's correctional institutions other than Patuxent, that the law be amended either (a) to give full jurisdiction over Patuxent to the Department of Correction or (b) to provide for Patuxent's virtual autonomy.

Mr. James W. Curran, Maryland Superintendent of Prisons, Mr. James Bennett, Director of the Federal Bureau of Prisons, and Mr. Sanford Bates strongly advocated that the law be changed by giving the Department of Correction general administrative control over Patuxent. Mr. Bates, in his report on Patuxent, summarized his position as follows: "The Patuxent Institution, including the Diagnostic Center, should not only be in the Department of Correction, but of the Department of Correction, and should be subject to the same oversight and control as the other correctional institutions."

Mr. James G. Rennie, Director of the Department of Budget and Procurement of Maryland, urged that complete administrative control in the Department of Correction is desirable from the general governmental point of view. He believed that Patuxent's director should be subject to the Department of Correction in the same manner as wardens of the other correctional institutions, and that there should be no division of responsibility. He pointed out that the strong trend in governmental organization is toward placing authority in one top administrator and making him responsible to the Chief Executive. He felt that the experiment which Patuxent represents, "has three-quarters worked," and stated that nobody denies that the treatment at Patuxent has been good. While he felt strongly that the institution should be under the control of the Department of Correction, with a psychiatrist in charge of treatment, he believed that if the institution is made autonomous it should have a governing board over it, "and preferably a hard-headed lay business man, not psychiatrists, doctors, penologists or anybody else."

Mr. G. C. A. Anderson, the Chairman of the Board of Correction, and Mr. Enos S. Stockbridge, his predecessor, disagreed with the penologists and the Budget Director on the issue of administrative organization. They with Dr. Manfred S. Guttmacher, the Chairman of the Patuxent Advisory Board, strongly advocated that Patuxent be made independent of the Department of Correction. Mr. Anderson felt as a result of his experience that Patuxent "does not seem to work into the prison system. It ought to be set up as a separate entity, run and administered as a separate entity." Mr. Anderson was sure that he spoke for the other members of the Board as well as for himself. Mr. Stockbridge testified: "... the best chance for Patuxent to establish itself and do the job it is intended to do and can do would be to have it in a separate department. If there were such a department, I think there should be a Board. I think that Board should be a top-policy one; I do not think it should be bothered

progress toward social stability versus time off for good behavior. The experiment which Patuxent embodies under the indeterminate sentence may never solve our vast penal problems, but there is at least the prospect that, if the experiment is allowed to progress along the lines it is following, the concepts of indeterminacy and the development of internal controls may beneficially be extended to other parts of our prison population.

In our judgment, at least for the near-term future, under conditions as they exist and are likely to continue to exist for that period, the two systems cannot be successfully combined under one administrative control. The conflicts go far beyond the differences of professional approach; they are reflected in every detail of institutional administration. At the present time, and apart from clashes of personalities, we believe these conflicts to be irreconcilable.

The Penitentiary, House of Correction and the Reformatory for Males are badly overcrowded, while Patuxent will have empty beds for some years to come; yet it is basic to the Patuxent system that it only take for treatment persons under the indeterminate sentence or a sentence so long it is the virtual equivalent. The Board of Correction has only a few part-time psychiatrists, serving part of a day a week; Patuxent has five full-time and three part-time psychiatrists. Patuxent has three full-time psychologists for about 400 inmates; the Board has two for about 5,400 prisoners. Patuxent has been given this professional staff for the very reason that it represents an experiment, and probably should and will be given more, yet, despite the recognized need, the Board of Correction's staff in these fields is almost non-existent. Until our pre-existing correctional system is given the professional help and physical facilities it so badly requires, and until Patuxent has been able to establish firmly the efficacy of its own methods, we believe it to be inevitable that to give control of Patuxent's administration to the Department of Correction would result in a fatal dilution of Patuxent's resources.

The failure of the Department of Correction to obtain an adequate professional staff of psychiatrists and psychologists is not of itself a reflection upon the Department's administration, present or past. The deficiency exists in penological institution's throughout the country. The supply of professionals in these fields does not begin to meet the demand for their services in private practice, industry and government. Persons trained in these professions are not attracted to and will not serve in the usual correctional institutions. We are informed that there are 20,000 vacancies for psychiatrists in the United States and only 4,500 registered psychiatrists to fill them. It is only because the unique character of Patuxent has begun to be recognized that, even with increased salaries, it has recently been able to recruit a substantial proportion of the professional staff it believes to be necessary. If Patuxent were to be placed under the administrative control of the Department of Correction, we are convinced that most if not all of its professional staff would terminate their services.

The facts to which we have referred are, in many respects, unfortunate, but they nevertheless exist. We believe they exist, not because of any individual fault, but because of the situation which we find now prevails and, we are convinced, will continue to prevail for an indefinite period. We believe that to give administrative control over Patuxent to the Department of Correction at this time would mean the virtual end of the experiment. We further believe that an autonomous Patuxent for a limited term would, in the end, be to the ultimate advantage of our penological system as a whole.

The studies which preceded the enactment of the law clearly indicate that it was regarded as essential that control over the methods of treatment, the research project and the diagnosis to determine whether or not persons are defective delinquents should be vested in trained and experienced psychiatrists. The law provides that the Director "shall be a trained, able and competent psychiatrist with at least five years experience in the practice or teaching of psychiatry". He is appointed by the Governor, by and with the advice and consent of the Senate, from a nominee or nominees proposed to the Governor by a special committee composed of the professors of psychiatry of the Medical Schools of the University of Maryland and the Johns Hopkins University and the chairman of the Board of Correction. As set forth in the opinion of the Attorney General of June 17, 1959, which is attached hereto as part of Appendix III, "while the law entrusted the general administration and supervision of Patuxent to the Board of Correction, the Director is directly answerable and responsible not to the Board of Correction but to the Governor." Within the Director's responsibilities, under the present law, are Patuxent's security and custodial operations.

Under the system as it exists, the Director of Patuxent is responsible for a cluster of duties whose performance necessarily militates against his concentration on the primary responsibilities of planning and administering treatment, diagnosis and research. Among other matters, he is responsible for the preparation and presentation of the budget. All fiscal matters come under his jurisdiction. The necessity of appearing and testifying in virtually all of the court hearings to determine whether a person should be committed as a defective delinquent and in proceedings involving the redetermination of that question, necessarily interferes with his professional duties. It is to be hoped that with an enlarged staff, the Director may be able to train one or more of the other professional members of the organization to testify before courts and juries throughout the State, but in endeavoring to determine what is best for Patuxent's successful administration, we must keep in mind that, for some time at least, the Director must continue to devote a substantial portion of his time to the preparation and execution of his function as an expert witness in the court proceedings.

Beyond the impossible demands which the present system makes upon the time and energy of the Director, no matter how able and dedicated, we believe the determination of policy should be the responsibility of an able board, rather than of a single individual. The Director should submit his ideas to the Board for discussion, screening, approval and implementation, but the responsibility, in such a new and experimental field, should be carried by more than one man. The Director should be appointed by the Board on the basis of his professional ability, as the law now provides, but the Board should be directly responsible to the Governor for the control and policy of the institution, and the Director should be answerable to it. The question whether the professional staff of the Patuxent Institution should have tenure, and, if so, the nature thereof, should be considered by the Policy Board.

It is inherent in our conception of such an independent Board that it should be aware of and sympathetic with the basic objectives of the project. The responsibility of the Director to the Board should not mean a stultification of his own plans, but rather should result in a screening and strengthening of the specific methods advocated to achieve Patuxent's aims. If it endorses the planning of the Director, the Board can act to effectuate that

of Patuxent's parole system, we believe that the experience and contacts of the Director may be of material benefit in the Advisory Board's functions.

If, as we recommend, control of Patuxent is given to an independent policy board, we see no useful purpose to be served by retaining in the law the provisions making the Diagnostic Clinic an independent unit. If as the Committee of the American Psychiatric Association recommends, the members of Patuxent's staff who diagnose persons referred to them initially for examination as to whether or not they are defective delinquents should not thereafter take part in the treatment of any of those persons committed to Patuxent, the separation of functions should be worked out by the Director, if and when the staff is sufficient for such a specialization, and if and when the Board approves the functional separation.

No change is suggested in the definition of defective delinquency. We have sought to clarify the procedure as to requests for examination, including the right of the Department of Correction to make such requests. No change is recommended as to the procedure in court hearings except that, for the reasons above set forth, the draft provides that, after commitment, no petition for review shall be filed until two-thirds of the original sentence has been served.

We recommend that the statute be amended to make the procedure the same for the commitment of defective delinquents to Patuxent whether the person to be examined as a possible defective delinquent has been recently convicted and is not yet serving a prison sentence of fixed duration or whether he is a prisoner in a penal institution in the Department of Correction. It was always recognized that the Department of Correction should be able to send prisoners from other institutions to Patuxent for examination and, with the exception of prisoners serving sentences for crimes committed before June 1, 1954, that any such prisoner diagnosed as a defective delinquent should be committed to Patuxent under the same indeterminate sentence that would apply if he had been committed to Patuxent before beginning a limited sentence in a penal institution.

The present statute provides that prisoners transferred by the Department of Correction to Patuxent as possible defective delinquents must be examined by the Diagnostic Clinic; this specific requirement does not apply to persons transferred to Patuxent by order of court before beginning their fixed sentences. However, Patuxent's professional staff has never been sufficiently complete to permit the Diagnostic Clinic to come into actual existence, and it is mainly for this reason that the transfer of prisoners intended by the law has not taken place, although it cannot be doubted that there are men in the prisons who are defective delinquents and whose transfer to Patuxent would benefit the entire prison system and perhaps the men themselves as well.

To remove the obstacle blocking transfer of prisoners to Patuxent the 1960 Legislature amended Article 27, Section 706 (a) to empower the Superintendent of Prisons to transfer prisoners to Patuxent, without any stated condition that such prisoners be diagnosed as defective delinquents or committed on indeterminate sentences. This power has not been exercised and there has been convincing testimony before us that the effectiveness of the Patuxent program and the morale of the inmates there would be very much damaged by an influx of prisoners who are serving fixed

We believe the establishment of the policy board will provide sufficient overall control for proper administration.

The draft contains a new provision to clarify Patuxent's right to continue its interesting and hopeful experiment of allowing some persons to work outside, returning to the institution after the hours of employment, and to apply a reasonable part of their earnings to their institutional maintenance. A somewhat similar provision was enacted by the General Assembly in 1959 as to employment of persons in Harford and Anne Arundel Counties. (Code, Art. 27, Section 645K.)

The draft provides for transfers of inmates between Patuxent and the Department of Correction by agreement between the two agencies, while reserving to the Department the absolute right to send any person to Patuxent to determine whether he is a defective delinquent.

Other statutory changes of a technical nature are set forth in the draft to effectuate the intent to give control over Patuxent to the independent policy board.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. Maryland's Defective Delinquency Law has proved to be a major step in the protection of the lives and persons of innocent people. Since the adoption of the law, Patuxent has shown that it can and does ascertain with reasonable certainty which of the persons sent to it for examination are defective delinquents. We are convinced that if it were not for the indeterminate sentences of these dangerous criminals, many of them upon their release on the expiration of fixed sentences, would have committed other serious crimes against the personal safety of Maryland's citizens. Even though the successful rehabilitation of many persons committed to Patuxent as defective delinquents may be doubtful or even impossible, the safeguarding of the public which has already been achieved is so fundamental that in itself it shows the wisdom of the law and the establishment of Patuxent.

2. The definition of defective delinquency in the law has been held by the Maryland Court of Appeals to be sufficiently certain and definite, and to set up matters that are susceptible of proof. Moreover the definition has been found workable in practice. We recommend that the definition not be changed. We suggest, however, that more discretion be exercised in the administration of the law so that commitment proceedings be not instituted against persons whose future danger to society is found to be limited only to comparatively minor offenses against property rather than to lives and persons.

3. In our opinion, the procedural steps provided by the law to determine whether or not a person is a defective delinquent are fair and adequate. The only change we recommend in the procedure is that once a person has been committed as a defective delinquent, the right to a re-determination of his delinquency be postponed until shortly before the expiration of the fixed sentence imposed before his commitment.

4. While the number of cures effected at Patuxent is not the sole or even the most important criterion for the appraisal of the project, treatment of the defective delinquents, to the extent that professional skills and physical facilities can be made available, is one of the basic objectives.

resents. We further believe that an autonomous Patuxent for a limited term would, in the end, be an ultimate advantage to our penological system as a whole.

We recommend that the control of the policies of Patuxent, including the preparation of its budgetary requests, be placed in a policy board of five members, to be appointed by the Governor. We recommend that two members of the policy board, one of whom should be a psychiatrist, be chosen from the Advisory Board, and that the other members of the policy board be business and professional men whose standing in the community and interest in the problems with which Patuxent deals will be such that they will command the respect of its director and staff and of the officials and agencies of the State.

The testimony indicates that the director and some of his assistants are at times preoccupied with lay administration and business matters. We recommend that the organizational and functional structure of Patuxent be carefully reviewed by the independent policy board, to determine the advisability of delegation by the Director of certain administrative and business matters to qualified lay employees. This may lead to the conclusion that an additional associate director for business affairs should be made a permanent part of the staff.

Our recommendation as to Patuxent's administrative organization is not made as an ultimate solution of the problems involved. Like Patuxent's treatment and research programs, we believe that if the change we recommend is adopted, the administrative organization should be re-evaluated in five years and again in ten.

8. In addition to the proposed change in Patuxent's administrative organization, we recommend other comparatively minor changes in the law. These include a narrowing of the jurisdictions in which questions of commitment and redetermination can be heard; adding the Director of the Department of Parole and Probation to Patuxent's Advisory Board; and a provision that will make it possible to apply some of the earnings of Patuxent's inmates who have been given leave on a work-out, live-in basis to the defrayment of the institutional cost.

9. There has been some criticism of Patuxent from two opposite points of view. A few people have criticized the whole plan because it permits an offender to receive an indeterminate sentence although he has only been found guilty of a relatively minor offense. We have found that in practice very few offenders are committed to Patuxent unless they have a record of more than one conviction, or one conviction following various difficulties which brought them before a juvenile court. If, as we believe, the administration of the criminal law should be regarded primarily as an effort to protect society—ourselves, our wives and our children—to the best of our knowledge and ability, and not as a kind of game, with a penalty for being caught and convicted, we are satisfied that the overwhelming majority of the people of this State would agree that these offenders should be at Patuxent. No system of correction devised by man has ever worked perfectly, but we believe that the present safeguards, with the changes we recommend, will prevent the detention of offenders at Patuxent longer than is reasonably necessary for the protection of society.

On the other hand, there has been criticism of the administration of Patuxent because some people feel that not enough attention has been given to security as opposed to treatment. We recognize that security is

APPENDIX I

DECISIONS OF THE MARYLAND COURT OF APPEALS

- Eggleston v. State*, 209 Md. 504, 121 A. 2d 698 (1956)
McElroy v. Director, 211 Md. 385, 127 A. 2d 384 (1956)
Long v. Warden, 211 Md. 657, 127 A. 2d 141 (1957)
Reed v. Warden, 212 Md. 645, 129 A. 2d 92 (1957)
Caparella v. State, 214 Md. 355, 135 A. 2d 311 (1957)
Palmer v. State, 215 Md. 142, 137 A. 2d 119 (1957)
Marshall v. Director, 215 Md. 622, 137 A. 2d 661 (1958)
Moquin v. State, 216 Md. 524, 140 A. 2d 914 (1958)
Blizzard v. State, 218 Md. 384, 147 A. 2d 227 (1958)
Jefferson v. State, 218 Md. 397, 147 A. 2d 204 (1958)
Roberts v. State, 219 Md. 485, 150 A. 2d 448 (1959)
Cowman v. State, 220 Md. 207, 151 A. 2d 903 (1959)
State v. Roberson, 222 Md. 518, 161 A. 2d 441 (1960)

TRIAL COURT DECISIONS

- Caple v. Patuxent Institution*, No. 1231-B Misc. Docket No. 2
 (Circuit Ct., Washington Co., July 25, 1960)
Schaeffer v. Patuxent Institution, No. 2133 Misc. Docket 6, page 196
 (Circuit Ct., Baltimore Co., Oct. 27, 1960)

REPORTS AND PUBLICATIONS

- Administrative Office of the Courts, State of Maryland, Annual Report,
 1958-1959
 American Law Institute, *Model Penal Code* (Tentative Draft No. 4)
Annotated Code of Maryland (1957 ed. & supp.) Article 31B
 Attorney General of the State of Maryland, Opinion of, dated May 17 1960,
 reprinted at page 54, *infra*.
 Baltimore County Grand Jury, Report of, April 1959 Term of the Circuit
 Court for Baltimore County

- Research Division, Maryland Legislative Council, "An Indeterminate Sentence Law for Defective Delinquents", Report No. 29, Dec. 1950
- Robinson, Jerome, "Address on Defective Delinquency" delivered to General Assembly, Council of State Governments, Dec. 5, 1958
- Slicher, James P., "Analysis of Report of the Escape of inmates from Patuxent Submitted to Gov. Tawes by Dr. Boslow" May 14, 1959
- "Sommaire-Introduction", reprint from *Yearbook of the Northern Association of Criminalists*, 1957
- Sturup, George K. "The position of Forensic Psychiatry in Denmark" reprinted from *Acta Medicinæ et Socialis*, Vol. 9, p. 294 (1956)
- Wechsler, Herbert, "The American Law Institute, Some Observations on its Model Penal Code" *American Bar Journal*, April, 1956

suggest that the Director occupy the same role as that of the mental hospital superintendent who cannot commit patients to his own institution; he can and does treat patients committed by others and in effect, he does have decisive and if necessary, perpetual control over the rights and liberties of the individual patients. This role has worked well within the legal safeguards for individual rights.

Our Committee sensed from the statements of the staff that conflict of interest inherent in this dual role of committing expert and treating expert undoubtedly erected some impediment to reaching the inmate patients; but in the staff view not in a measure that could not be overcome. We were inclined to consider the impediment as substantially handicapping, that any change of procedure to remove it or minimize it is certainly worth our attention especially in the view of the manifold difficulties which invariably affect psychotherapy even under the best of conditions.

Within the role pattern ascribed to the mental hospital formula, we can see no need to change the function of the Board of Review which in Patuxent would match the mental hospital staff which indeed makes decisions affecting discharge and retention.

In view of this conflict of interest our Committee was concerned for the practical administrative consequences of requiring the Director and his Assistant and other staff members to appear in Court in an adversary proceeding to effect a commitment of an inmate patient. We were informed that the bulk of the Director's time is consumed in Court appearances, in commitment and review hearings. We can understand the necessity for his appearance in review hearings as would be similarly imposed upon the superintendent of a mental hospital, but when we find that the Director is preoccupied with diagnostic commitment hearings, we regard this as a misplacement of professional time and talent better utilized in the design and management of Patuxent's primary purpose—the therapy of its inmate patients and the pursuit of further knowledge through disciplined research. In this connection we are moved to suggest that the Defective Delinquent Law imposes a responsibility upon the Patuxent staff beyond its own discipline. The commitment of a defective delinquent is a public event and the responsibility for it lies with the law. The appearance in Court of the Patuxent staff identified with a judicial finding, creates in the offender an image of the staff member which is alien to his proper function of treatment and research. It may not be an exaggeration to say that to the offender, in current practice, the Patuxent staff member may have more the image of a prosecutor or policeman rather than of a helpful physician.

Appraisal of the professional staff. Our Committee was unanimously impressed with the qualifications and personal caliber of the Patuxent professional staff each of whom we found animated by an uncommon loyalty and dedication and in each of whom such qualities and values could readily secure more rewarding positions elsewhere. We would be remiss in not making particular reference to the Director, Dr. Harold M. Boslow, for his energy, devotion and professional competence.

Psychiatric diagnosis and treatment. In our review and appraisal of the 27 case summaries (Item A-3) and in our interview with two inmate patients we were satisfied that within current psychiatric criteria and usage, the Patuxent staff has reached and maintained an acceptable level of diagnostic accuracy. Here it should be remarked that it is generally

is the method of choice for those who require some initial period of interpersonal group experience in order to develop a capacity for introspective verbalization and to gain secure social relationships with others. Group experience in the setting of Patuxent affords the individual a significant contact with those who by example expose to him first realization that some persons exist who are accepting, humane, understanding and willing listeners, and good models to emulate. This picture does not obtain in the regular prison setting.

Parole. Our Committee was impressed with the Patuxent record of parole management. The Patuxent parole experiment so far is small. More time and a larger sampling are needed before ultimate judgments can be made that the Patuxent experiment has substantial "cash values". However, we are impressed so far with the Patuxent record.

The Concept of Indeterminacy. From the standpoint of social policy, the Defective Delinquent Law is primarily concerned with the protection of society, secondarily with the rehabilitation of antisocial persons by means now developed by psychiatry, psychology and the social sciences. The indeterminate sentence is the key operation; those who are continuously dangerous to society should be removed from society and indeterminately, if they cannot be rendered non-dangerous. Along this indeterminate time scale, Patuxent provides for the interventions calculated to produce change and to gain and systematize the necessary experience to ascertain by what methods of science at what point of this time scale a determination can be made when the desired change is permanent.

Our Committee subscribes to the principle of indeterminacy applied to the retention of a class of social offenders who manifest repeated, harmful behavior which can be ascertained as symptomatic of a kind of continuing mental disturbance, which in the Defective Delinquent Law is broadly defined as "mental defect" and/or "emotional unbalance". In this law, it is theoretically possible for a defective delinquent, failing positive response to treatment, to be incarcerated for life. In our present state of knowledge, this places a large responsibility upon psychiatry and we can foresee the onus of this responsibility for the Patuxent staff if and when the time comes when the institute accumulates a significant number of defective delinquents, who are not insane, but who either cannot change or change enough to warrant a release into the community.

We are saying that this aspect of indeterminacy properly imposes upon the law the ultimate responsibility after it is clearly demonstrated that the offender is unable to change after an ample trial with psychiatric treatment. Alone, psychiatry should not be asked to assume the ultimate diagnostic determination to impose "life detention", unless the Defective Delinquent develops a chronic insanity for which an indeterminate to life detention by psychiatric criteria is now acceptable public policy.

From the above, our Committee desires to extend its comments. Operationally defined, indeterminacy in psychiatry describes a relationship between the patient and psychiatrist in which both mutually experience treatment as a shared, on-going communication of psychological events extended into the indefinite future. In a practical world such treatment comes to a point of termination, with the formal connection vis a vis patient and psychiatrist discontinued. Successful treatment implies that the experience has enabled the patient to change and to carry within him the psychological gains indefinitely. Failure of treatment implies that neither significant change is effected nor psychological gains continued.

We sense that the staff as a whole has held steadfast to its professional ideals and standards. There is need for an expression of responsible opinion to fully acquaint the public and the State administration with the merit and special needs of the Patuxent operation, with its budgetary requirements and its need for sufficient time for the verification of its results.

Patuxent has not succeeded as a scientific research institution intended in the design of its founders. In the six years of its operation, Patuxent has not had a chance of getting on its research feet, not for lack of talent, but for lack of support through administration channels from above. The short-handed and harrassed staff has been submerged in the work of diagnosis, in meeting legal requirements and in treatment. This satisfies a necessary function of Patuxent, but in time, without an ongoing research program and activity, the Institution can become routinized and lose its spirit of experiment and quest for increase of knowledge to relapse to what appears the aim of its detractors—another conventional prison. As matters now appear, it is unlikely that Patuxent can continue as a facility for disciplined study and treatment under present administrative policy and control.

E. Recommendations

Our Committee fully subscribes to the rationale of the Defective Delinquent Law and its operation in the Patuxent Institution. We recognize some defects in the law as it applies directly to the role of the treating psychiatrist, and as it distributes the responsibility for indeterminate retention of certain defective delinquents. In respect to the former, our Committee considered a provision of the law in compliance to the following operational principles: That the Patuxent staff does not commit whom it treats. We considered the possibility that with a larger staff it would be possible for isolated staff members to commit but not treat. However, we doubt that this expedience would overcome the psychological barriers inherent in a relationship of treatment as above alluded to in our discussion. We suggest that your Committee consider the merit of the following proposals:

1. That a person alleged to be a defective delinquent be committed to Patuxent for study and observation for a specified period and thereafter that the Court appoint a Commission consisting of two qualified psychiatrists (and if required, an attorney) to personally examine the alleged defective delinquent at the Patuxent Institution, avail itself of the standard clinical findings assembled by the Patuxent staff to implement its own findings and to submit its own conclusions to the Court. The Patuxent staff should act as a testing and data assembling facility for the Commission and should not determine the conclusions of the Commission. This provision would meet our objection that the Patuxent staff testify for commitment, and

2. That after commitment of the defective delinquent, a provisional term be established for comprehensive observation and treatment to determine the treatability of the defective delinquent and that upon proper certification by the Patuxent staff to the Court, the defective delinquent found unable to respond to the treatment currently available, be removed to another institution in the State system; and that following his removal and upon further mandatory review by qualified examiners, he have a right of petition for return to Patuxent, having demonstrated to the examiners' satisfaction that he has attained sufficient motivation for further

would also strongly urge the eventual use of Patuxent for resident training drawn from such sources as the Henry Phipps Clinic, the Psychiatric Institute and other nearby established psychiatric institutions. We would recommend that all members of the Patuxent professional staff have not only time provisions for furthering their own education and training but also that they have opportunities for active faculty appointments and teaching assignments. We need not emphasize the value of these associations which promote a growth, stimulate exchange of knowledge and experience, confer status and prestige and purpose to professional work.

Library. Our Committee noted the absence of a library for the professional staff at Patuxent Institution. This is an area of neglect and we urge its remedy.

Research Statistics. In any research expansion, there should be provisions made for a statistician or at least the part-time services of a statistician for evaluation of the data. Also in the research efforts, it would be essential to establish long range criteria for selection, therapeutic gain and subsequent release adjustment.

Relationship of Patuxent Institution to the Department of Correction. Our Committee came to the conclusion that some means effect a further if not complete separation of Patuxent from the Department of Correction, that its administration be in the hands of a separate Board accountable to the Governor; that such Board have a proportion of its membership from persons of standing in the psychiatric and social science professions; that the Director be responsible to the Board and not to the Governor and that the Advisory Board be retained.

The continued existence of Patuxent as a scientific facility will require a sustained support of the learned professions and an effective interpretation to the public, otherwise, without care and feeding, it can readily lose its character and usefulness.

In the course of our observation of the Patuxent Institution and in our later projections of its future, we came to one mind that a renewed impetus should be made for its fuller development as a facility for research, for which there should be interval re-evaluations of hypothesis, design and method. The literature of criminology is abundant in library research into the nature of psychopathy but scant in actual study of psychopathic offenders. Patuxent offers unlimited opportunity for such a disciplined study.

Respectfully submitted,

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jurisdiction". However, during its journey through the General Assembly, the proposed legislation was amended so that the Patuxent Institution would not be an autonomous State agency, but would be "within the general administrative control and supervision of the Board of Correction". Article 31B, Section 4(a).

Specifically answering your question, the general administrative operation and supervision of the Patuxent Institution, therefore, falls within the duties and responsibilities of the Board of Correction. It is our opinion also that within this general administration falls the responsibility of preparing the budget for the institution and assisting the institution in its fiscal policy.

In reference to security and custodial operations, the Patuxent Institution is controlled by one of the Associate Directors who, under the control of the Director, is charged with custodial duties of the institution. It is our opinion that since the Legislature created a position under the Director of the institution for custodial purposes, that the Director is ultimately responsible for security and custodial operations of the Patuxent Institution.

II.

Section 2 of Article 31B establishes the position of Director of the Patuxent Institution and states that he shall be appointed by the Governor, by and with the consent of the Senate, from a nominee or nominees proposed by a special committee composed of the Professor of Psychiatry of the Medical School of the University of Maryland, the Professor of Psychiatry of the Johns Hopkins University, and the Chairman of the Board of Correction. During the first six months after appointment, the Director is on probation and may be subject to removal by the Governor without cause. Thereafter, he is subject to removal by the Governor only after charges have been preferred and a hearing conducted on those charges. Since the Governor is directly responsible for the appointment of the Director and is the only person who may discharge or remove him, it is our opinion that there are no intermediate steps in the chain of command from the Director of the Institution to the Governor, and that the Governor would be the only person to whom the Director is directly answerable or responsible.

III.

Subsection (d) of Section 4 of Article 31B creates the Advisory Board for Defective Delinquents. It consists of psychiatrists, sociologists, a law professor specializing in constitutional law, and two practicing members of the Maryland Bar. The Advisory Board is required by this subsection to meet at least once in every three months and is instructed to "confer with the staff of the institution and with the Board of Correction from time to time, and shall give to the institution a general consultative and advisory service on problems and matters relating to its work". In addition, the Advisory Board has power to prefer charges and recommend to the Governor the removal of the Director.

In an opinion of this office dated August 31, 1954, and reported in 39 Opinions of the Attorney General 130, relating to the eligibility of a police magistrate of Baltimore City to serve on that Board, it was the conclusion of this office that the Board did not exercise any of the sovereign

APPENDIX III-B

Excerpts from the survey of Patuxent Institution made by Mr. Sanford Bates at the request of the Maryland Self-Survey Commission, published October 30, 1959.

"* * * Section 4 provides that the Patuxent Institution shall be within the general administrative control and supervision of the Board of Correction; and yet, earlier in the Law, namely, in Section 2, it is indicated that the Department of Correction has very slight control over the appointment or retention of Patuxent's Director. He is appointed by the Governor, with the advice and consent of the Senate, from a list of names proposed to the Governor by a committee of three, one member of which is the Chairman of the Board of Correction; and the Director can be removed only by the Governor, after a hearing. The Director is made the chief psychiatrist of the Department of Correction, which does not appoint him and cannot remove him. Professional personnel in the institution are to be appointed outside the Merit System and without the approval of the Department of Correction. The Director even has the last word in the appointment of the Associate Director in charge of custody.

"Again, it is provided, in Section 4, that although the Board of Correction may establish divisions within the institution, it cannot have any control whatever over the Diagnostic Clinic. The reason for this provision is not clear, but there is the unpleasant imputation that the Board of Correction might attempt to influence the diagnoses of the Clinic. * * *

"The responsibilities for the operation of this institution have been further complicated by the following facts: first, the Diagnostic Clinic, by whomever it may be comprised, is free from the control of the Department of Correction; second, an Advisory Board for Defective Delinquents is established and its composition is specifically provided for by law; and third, an Institutional Board of Review is set up. The Board of Review is legally empowered to parole men from the institution, and, on its own judgment, to call them back. However, the membership of the Board of Review may change frequently; and in Section 12 it is implied that this Board is not to be under the control of the Director of the institution or the Department of Correction.

"Similarly, the Chief of the Diagnostic Clinic, whoever he may be, is not appointed by, nor in any sense under the direction of the Department of Correction; but in Section 12 of the Law, he is given the right to appoint the Board of Review from among the officers, employees, and consultants employed by the institution. There is no requirement regarding the number of members of this Board, which may vary from time to time, nor any requirement concerning the number of psychologists, other staff members, or custodial officers who shall be included in its membership. There is the provision that two specified members of the Advisory Board are ex-officio members of the Board of Review.

"When an unspecified number of people exercise final authority to release inmates on parole, to recall them from parole, and to make recommendations to the Court concerning discharges from custody, and this authority is exercised without any statutory control, either by the institution or by the Department of Correction, we have a condition which cannot avoid engendering doubt and friction."

